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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER			SPAHN, GAY	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK BUDZIK

Appeal 2008-0440
Application 10/685,750
Technology Center 3600

Decided: March 27, 2008

Before WILLIAM F. PATE, III, MURRIEL E. CRAWFORD, and JOHN C. KERINS, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 1 to 8. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellant invented a drywall trimming accessory (Specification 1).

Claim 1 under appeal reads as follows:

1. A drywall-trimming accessory having a flange, which has two expansive surfaces facing oppositely, wherein the drywall-trimming accessory is made from a cellular polymer and wherein at least part of at least one of the expansive surfaces of the flange is characterized by open cells of the cellular polymer.

The Examiner rejected claims 1 to 8 under 35 U.S.C. § 103(a) as being unpatentable over Koenig in view of Hawley and Hoffman.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Koenig, Jr. (Koenig)	US 2002/0134035 A1	Sep. 26, 2002
Hoffmann, Sr. (Hoffmann)	US 6,684,586 B1	Feb. 3, 2004

Hawley's Condensed Chemical Dictionary 534 (11th Ed., 1987)
(definition of "foam plastic.") (Hereinafter referred to as "Hawley.")

The Examiner contends that the disclosure in Koenig that the drywall-trimming accessory therein disclosed is made of polyvinyl chloride is considered to meet the claim recitation of cellular polymer. The Examiner reasons that it would have been obvious to form the polyvinyl chloride trimming strip of Koenig from an open cell polyvinyl chloride, since such is a well known polyvinyl chloride as expressed by Hawley.

Appellant contends that the Examiner erred in finding that Koenig discloses a drywall-trimming accessory made from cellular polymer characterized by open cells.

ISSUES

The issue is whether the Appellant has shown that the Examiner erred in finding that Koenig discloses a drywall-trimming accessory made from cellular polymer.

FINDINGS OF FACT

Koenig discloses a drywall trimming strip made of a polymeric material such as polyvinyl chloride (Koenig, para. [0011]).

Hawley defines plastic foam as a cellular plastic that may be either flexible or rigid. Hawley discloses that rigid foams may be polyvinyl chloride (Hawley, p. 534). Hawley also discloses that blowing agents are used to form the foam (Hawley, p. 534).

ANALYSIS

We will not sustain the rejection. We do not agree with the Examiner that Koenig discloses a cellular polymer. Koenig discloses that the drywall-trimming accessory is comprised of polyvinyl chloride. However, Koenig does not disclose that the polyvinyl chloride is a cellular or foamed polyvinyl chloride. In our view, when dealing with polymeric extrusions, the presumption is that the resulting product is not cellular or foamed, unless, as Appellant has described and as Hawley discloses, the process is taught as including the injection of gas or the provision of a blowing agent, to foam the polymer.

The disclosure in Hawley that a foam plastic may be made of polyvinyl chloride does not establish that all polyvinyl chloride is a foamed or cellular polyvinyl chloride. In addition, there is no disclosure in either

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Koenig or Hawley of a foamed or cellular polyvinyl chloride with open cells.

The decision of the Examiner is REVERSED.

REVERSED

hh

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